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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,486	08/22/2003	Eric Ryba	11350.23	9316

23862 7590 04/20/2005

NYDEGGER & ASSOCIATES  
348 OLIVE STREET  
SAN DIEGO, CA 92103

EXAMINER
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ROLLINS, ROSILAND STACIE

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

9P

**Office Action Summary**

Application No.

10/646,486

Applicant(s)

RYBA, ERIC

Examiner

Rosiland S Rollins

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/31/11/24.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lalonde et al. (US 6283959), Benson (US 4082096), Dobak, III (US 6482226) and further in view of Kudaravalli et al. (US 6471694). Lalonde et al. disclose a device for cryoablating exposed tissue comprising a tube-shaped shaft (10), a flexible enclosure (203) and a means for cooling (201) the enclosure to cryoablate tissue. Lalonde et al. '959 teach all of the limitations of the claims except a shapeable element attached to the distal end of the shaft and extending therefrom into the cryochamber, a high pressure tube with a capillary tube connected in fluid communication with the distal end of the high pressure tube and a preconditioned cryo-fluid.

Benson discloses a cryoablation device that includes a shapeable element that helps to maintain the desired configuration of the tip and provide a means of pressing the probe tip into engagement with tissues. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a shapeable element on the Lalonde et al. device as taught by Benson to help maintain the desired configuration of the tip.

Dobak, III disclose a similar apparatus and teach that it is old and well known to include a high pressure tube with a capillary tube connected in fluid communication with the distal end of the high pressure tube since it allows cooling to be focused at the flexible enclosure and eliminates cooling along the catheter body (col. 4 lines 27-39; col. 6 lines 9+). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a supply tube with a coaxial capillary tube extending distally therefrom on the Lalonde et al. device, particularly in view of the teaching of Dobak, III.

Kudaravalli et al. disclose a control system for cryosurgery and teach that it is old and well known in the art to precondition the cryofluid to achieve and maintain an optimal flow rate of the cryofluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to precondition the cryofluid of Lalonde et al. as disclosed by Kudaravalli et al. to establish and maintain an optimal flow rate of the cryofluid. It would have also been obvious to precondition the cryofluid at the claimed pressure and temperature since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

### ***Response to Arguments***


Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive. Applicant argues that there is no motivation for a person of ordinary skill in the art to combine Benson with either Lalonde et al. or Dobak, III and given the disparity in size and function it is unlikely that the teachings in Benson would be operable with the catheters disclosed in Lalonde et al. and Dobak, III.

Benson is relied upon for the disclosure of a shapeable element used to shape the distal end of the device in which it is inserted. In applying the teaching of Benson to the device disclosed by Lalonde et al., one of ordinary skill in the art at the time the invention was made would inherently provide a rod that would fit and would be operable within the structural limitations of the device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rosiland S Rollins  
Primary Examiner  
Art Unit 3739

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